

No. 2834

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

FORD MOTOR COMPANY, a corporation,
Appellant,

vs.

BENJAMIN E. BOONE, INC., a corporation,
BENJAMIN E. BOONE AND BENJAMIN E. ,
BOONE, INC., a corporation,

D. R. BOONE AND NORA CARLYLE,
a co-partnership, doing business as
Benjamin E. Boone & Co.,
Appellees,

Transcript of Record

On Appeal from the District Court of the United
States for the District of Oregon.

Filed

NOV 28 1916

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*United States Circuit Court of Appeals for the Ninth
Circuit.*

FORD MOTOR COMPANY, a corporation,

Appellant,

vs.

BENJAMIN E. BOONE, Inc., a corporation,

BENJAMIN E. BOONE, and BENJAMIN E.

BOONE, Inc., a corporation, D. R. BOONE,

and NORA CARLYLE, a co-partnership, doing

business as BENJAMIN E. BOONE & Co.,

Appellees.

NAMES AND ADDRESSES OF THE ATTOR-
NEYS OF RECORD

E. L. McDougall, Northwestern Bank Building,
Portland, Oregon, and ALFRED LUCKING and L. B.
ROBERTSON, Detroit, Michigan, for Appellant.

LITTLEFIELD and MAGUIRE, Corbett Building, Portland,
Oregon, for the Appellees.

CITATION ON APPEAL.

United States of America,
District of Oregon—ss.

To Benjamin E. Boone, Inc., a corporation, Benjamin E. Boone, and Benjamin E. Boone, Inc., a corporation, D. R. Boone and Nora Carlyle, a co-partnership, doing business as Benjamin E. Boone & Co.

Greeting:

WHEREAS, Ford Motor Company, a corporation, has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the District Court of the United States for the District of Oregon, in your favor, and has given the security required by law;

You are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, Oregon, in said District, this 18th day of September in the year of our Lord, one thousand, nine hundred and sixteen.

R. S. BEAN,
Judge.

Due service of the within citation on appeal is hereby accepted in Multnomah County, Oregon, this 18th day of September, 1916.

LITTLEFIELD & MAGUIRE,
Attorneys for Defendant.

Filed September 18, 1916.

G. H. MARSH, Clerk.

*In the District Court of the United States, for the
District of Oregon.*

March Term, 1916.

BE IT REMEMBERED, That on the 14th day of June, 1916, there was duly filed in the District Court of the United States for the District of Oregon, an Amended and Supplemental Bill of Complaint, in words and figures as follows, to-wit:

AMENDED AND SUPPLEMENTAL BILL OF
COMPLAINT.

*In the District Court of the United States in and for the
District of Oregon, in Equity.*

Ford Motor Company, a corporation,

Plaintiff,

vs.

Benjamin E. Boone, Inc., a corporation, Benjamin E. Boone and Benjamin E. Boone, Inc., a corporation, D. R. Boone and Nora Carlyle, a co-partnership, doing business as Benjamin E. Boone & Co.,
Defendants.

Plaintiff, having first duly obtained from the court the right to file this amended and supplemental bill,

complains and for cause of suit, alleges:

I.

That plaintiff is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the state of Michigan, with its factory and principal place of business in the United States in the Village of Highland Park, Michigan, and duly authorized to transact business as a foreign corporation, in the State of Oregon, with a factory branch in the City of Portland, Multnomah County, Oregon.

II.

That defendant Benjamin E. Boone, Inc., is a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of Oregon, with its principal office and place of business in Portland, Multnomah County, Oregon.

III.

That Benjamin E. Boone, Inc., an Oregon corporation, and D. R. Boone, and Nora Carlyle, of Arkansas, are a co-partnership, doing business under the firm name and style of Benjamin E. Boone & Co., with its principal place of business in the City of Portland, Multnomah County, Oregon, said defendants being engaged in the business of selling automobiles and accessories.

IV.

That plaintiff is a corporation, duly organized and existing under and by virtue of the laws of the State of Michigan, and now transacting business in the said State of Michigan and divers other states and territories in the United States; that plaintiff has duly complied with all of the laws of the State of Oregon, pertaining to foreign corporations doing business in Oregon; that plaintiff and defendant respectively have permanent places of business and are transacting business in Portland, in the District of Oregon, and that the amount of the controversy between plaintiff and defendants greatly exceeds the sum of \$3,000, as hereinafter more particularly set forth.

V.

That the defendants are engaged in the general automobile business in the City of Portland, Multnomah County, Oregon.

VI.

That for a great many years, to-wit, twelve years last past, plaintiff has been engaged in the Village of Highland Park, Michigan, in the manufacture and selling of automobiles and automobile parts, said automobiles being commonly known as "Ford cars," "Ford automobiles" or "Fords," which automobiles and parts thereof, were invented, developed and fully perfected as the result of years of experience and manufacture and sales thereof by plaintiff, and fully protected by the patent laws.

VII.

That plaintiff has spent large sums of money in advertising in newspapers, magazines, etc., its products in the name of "Ford" and as a result of said advertising and of the merit of plaintiff's product, plaintiff's business grew and expanded and has constantly continued so to do, and that by reason of the advertising, publicity and public demand for the product of plaintiff, the words "Ford," "Fords," "Ford Motor Cars," "Ford Cars" and "Ford Automobiles," have come in the public mind to mean and to designate the automobiles, parts and accessories so manufactured and invented by this plaintiff.

VIII.

That in the conduct of this business plaintiff has made use of certain trademarks, among them a certain trademark known to the trade and public as the "Winged Pyramid" and carrying in script the word "Ford" and below the word Ford the words "The Universal Car," a copy of said trademark being attached to this complaint and made a part hereof and marked Exhibit "A"; and among them also the word "Ford" was written in script, a copy of said trademark being attached hereto and made a part hereof and marked Exhibit "B"; said trademarks and designs being duly registered as such by and through the United States copyright and trademark laws granting the exclusive right to use the same upon Ford automobiles, Ford parts and Ford accessories.

IX.

That in the conduct of its said business plaintiff appoints in divers states, counties, cities and towns, throughout the United States and elsewhere, certain corporations, firms and individuals to act as its agents in certain well defined territories in obtaining the sale of its said automobiles and pay to said corporations, firms and individuals so appointed by it certain discounts upon the parts sold by them; that in appointing such agents plaintiff enters into contracts and agreements with them, in writing, that they will not sell said automobiles in any territory not allotted to them in the respective contracts; that in the appointment and selection of said agents, plaintiff is careful to appoint only such persons who will carry out and observe the provisions of said contracts, and whom it may recommend to the public as reliable dealers, not only in the sale of said cars, parts and accessories, but in giving the proper service in the upkeep thereof thereafter.

X.

That plaintiff's agents are authorized and required to conspicuously display signs on and in their buildings and windows designating that they are agents for Ford cars, parts and accessories, and are required to give immediate and careful attention to all inquiries and to give good representations to all the interests of plaintiff in the territory respectively assigned to each of said authorized agents.

XI.

That under the agency contract of each of the authorized agents of plaintiff, sample copy of said contract being attached hereto and made a part hereof and marked Exhibit "C," the agent agrees that he will not make use of any advertising matter objectionable to plaintiff, and that as a result of the large amount of business transacted by plaintiff and the advertising done by it, and the great number of cars sold and distributed by plaintiff's authorized agents, certain words, phrases and expressions have come into general use as a part of the authorized advertising of such agents in connection with their signs on buildings and windows and in connection with their distribution of cards and letterheads, printed matter, newspapers and other advertising mediums, designed by such agents to promote their business in selling and distributing the product of plaintiff; that among such words, phrases and expressions which in the public mind, have come to mean that the person making use of such words, phrases and expressions is an authorized agent of plaintiff for the sale and distribution of its product, are the following:

The use on windows of the word "Ford," or "Fords."

The use on windows of the word "Ford" in dress and style imitating or resembling the trade-mark of plaintiff above referred to.

The use on business cards, letterheads, stickers, etc., of the word "Ford" in dress and style imitating or similar to plaintiff's trade-mark, as aforesaid.

The use on signs or banners of the word "Ford" or

the word "Fords" or the words "Ford Cars," "Ford Automobiles," or the words "Ford Distributors."

All of which by reason of the name and reputation of plaintiff and its method of vending its product have come to mean in the public mind that the persons so making use of such expressions, or any of them, are duly authorized and licensed by plaintiff to obtain sales of its said product in the territory wherein said advertising is used.

XII.

That the defendants are the owners and proprietors of a garage and sales rooms located on Alder Street in the City of Portland, Multnomah County, Oregon, and more commonly known as Benjamin E. Boone & Co.

XIII.

That none of the defendants herein are the authorized agents of plaintiff for the territory in which said place of business is located nor for any territory, and that none of the defendants are deemed by plaintiff suitable to receive an agency, or for arranging to sell plaintiff's automobiles, or the selling of plaintiff's accessories, and none of the defendants would be permitted by plaintiff any of the privileges accorded by plaintiff to its authorized agents; that defendants have respectively at all times herein mentioned, had full knowledge of the matters and things herein set forth and have been fully advised with reference thereto.

XIV.

That the defendants, for the purpose of misleading the public, and of fraudulently, unlawfully and unfairly diverting said plaintiff's trade, which lawfully and fairly belonged to the plaintiff and its authorized agents, and for the purpose of affording to plaintiff and its authorized agents an unfair competition and with the fraudulent intent and purpose of defrauding plaintiff and the public and of causing the public to believe that the said defendants are authorized agents of the plaintiff in obtaining the sale of its product, has been guilty, and continues to be guilty, of various fraudulent, unfair and misleading actions and representations; and that by said false, fraudulent and unfair methods the defendants have done and are doing, and unless restrained by this court will continue to do, to the plaintiff and its said authorized agents great and irreparable injury and plaintiff's business will be destroyed or placed in great jeopardy.

XV.

That among the false, fraudulent, unfair and misleading representations and actions of said defendants are the following:

(a) That defendants maintain on the front of their place of business the words "Benjamin E. Boone & Co., automobiles," and on the west side of their building a large sign with the word "Fords," said word being understood by the public to be employed only by the plaintiff and its authorized agents.

(b) That the defendants have caused to be printed certain posters which have been placed upon oil cans containing an automobile oil, carrying at the top of said posters the "winged pyramid" with the script word "Ford" thereon, imitative of plaintiff's trademark and at the bottom of said poster, after a description of the contents of said can, the words "Benjamin E. Boone & Co., Ford Agents, Portland, Oregon."

(c) That defendants have continually falsely, fraudulently, and unfairly represented to prospective purchasers of Ford cars that they were Ford agents, that they obtained Ford cars in quantity either from plaintiff's main factory at Highland Park, Michigan, or from the duly authorized factory branch at Portland, Oregon, or other factory branches elsewhere.

(d) That the defendants importuned agents of plaintiff at Woodburn, Marion County, Oregon, and at Kelso, Cowlitz County, Washington, and other agents of plaintiff at present unknown to plaintiff, in territories remote, from the defendant's place of business, to breach their said contract with plaintiff herein and did in collusion with said agents, fraudulently cause to be made and sent in to plaintiff's factory branch, fictitious orders for Ford cars and forthwith caused the Ford cars ostensibly ordered by said persons for disposition in vicinities of Woodburn, Marion County, Oregon, and Kelso, Cowlitz County, Washington, and elsewhere, to be driven or shipped by a roundabout course, without plaintiff's knowledge, to the defendant's place of business said automobiles, all for the purpose of obtaining

fraudulently, unfairly and in violation of the rights and contracts of plaintiff, and its authorized agents, certain Ford cars for the purpose of lending color to the false and fraudulent representations of defendants that it is plaintiff's authorized agent in the territory wherein defendants' place of business is located.

(e) That the defendants have caused to be printed in the Portland classified index of the Pacific Telephone & Telegraph Company's telephone directory the following: "Boone, Benj. E. & Co., Ford Auto Agency, 514 Alder St., Main 3966."

(f) That since the institution of this suit plaintiff has caused to be run in the Portland Oregonian and the Oregon Journal, on June 8, 1916, an advertisement, copy of which is attached to this complaint and made a part hereof and marked Exhibit "D," wherein it has advertised for sale new Ford automobiles fraudulently obtained from this plaintiff's agents; said advertisement setting forth that the price of said new automobiles in any territory is \$467.50, said price being greatly below the regular advertised retail selling price at which this plaintiff and this plaintiff's agents are permitted to sell said automobiles. As a result of said advertisement the defendants herein have fraudulently and unfairly, and in violation of the rights and contracts of plaintiff and its authorized agents, obtained customers of the plaintiff herein and its authorized agents, and made it impossible for plaintiff's authorized agents in the vicinity of Portland to sell Ford automobiles in accordance with their contracts with this plaintiff, and the plaintiff in

the city of Portland to sell automobiles in accordance with the contracts of its authorized agents, resulting in the jeopardizing of plaintiff's business.

Plaintiff alleges that said false, fraudulent and misleading representations and unfair competition and conduct has continued with respect to the allegations contained in sub-paragraphs A, B, C, D and E for a long period of time, to-wit: since February 1, 1916, and that the specific offenses charged in said sub-paragraphs have occurred frequently and continually prior to and during the period intervening between February 1, 1916, and the date of the filing of this suit; that said sign upon the defendants' place of business and said statement upon the cans of oil offered for sale by the defendant and the defendants in exhibiting the same have done so with the deliberately fraudulent intent and purpose of defrauding the plaintiff and its duly authorized agents and of misleading the public and prospective purchasers of Ford automobiles to believe that said defendants are authorized to arrange for the sale of Ford automobiles in Portland, Multnomah County, Oregon, and elsewhere, and to mislead and deceive said prospective buyers into the false supposition that they are entitled to received from defendants all the benefits which they might lawfully receive from a bona fide agent of this plaintiff; and that said sign displayed as above mentioned bearing the name "Fords" and the said statement upon the oil cans bearing the trademark and trade name of this plaintiff and the statement that the defendants are Ford agents and the statement in the Pacific Telephone & Telegraph Company's directory

that the defendants are a Ford Agency and the conduct of the defendants with respect to the plaintiff's agency at Woodburn, Marion County, Oregon, and at Kelso, Cowlitz County, Washington, and elsewhere, have been done, made and performed with the fraudulent intent and purpose on the part of said defendants of defrauding the plaintiff and its authorized agents and the public and of causing the public, and particularly prospective purchasers of Ford cars, to believe that said defendants were authorized agents of the plaintiff or in somewise lawfully connected with the plaintiff for the sale of its products, and for the purpose of misleading said prospective purchasers in the assumption that they are entitled to receive from defendants all benefits which they might lawfully receive from bona fide agents of the plaintiff.

XVI.

That by said false, fraudulent and unfair method of conducting defendants' business and by said false, and fraudulent signs, banners, inscriptions, labels, conduct, representations and statements, defendants continuously have done, are doing, and threaten to continue to do to plaintiff and its authorized agents, great and irreparable injury and damage and will destroy or place in great jeopardy plaintiff's business.

XVII.

That plaintiff has not means of ascertaining or determining just how many persons have been deceived by the signs, advertisements and representations above re-

ferred to, nor how many have purchased automobiles from defendants believing them to be the authorized agents of plaintiff, nor has plaintiff any means of estimating in money, the damage so done to plaintiff, its agents, or the public, nor has plaintiff any means of ascertaining or determining as to how many persons will be deceived in the future by the continuance and threatened continuance of said false and fraudulent advertisements and representations nor how many will be induced to purchase cars from said defendants by reason thereof, nor will plaintiff be able to determine in an action at law by any known measure of damages the sum of money which it will lose by reason of such fraudulent and unfair method of doing business, and plaintiff therefore alleges that it has no adequate and complete remedy at law and can only obtain relief by the equitable remedy of an injunction and accounting.

WHEREFORE, plaintiff prays for a decree of this court, that defendants and their employees and attorneys, be at first temporarily and afterwards permanently restrained and enjoined from

First: Making, advertising, or circulating any statements, or representations to the effect that the defendants are agents for the selling of Ford automobiles and the sale of Ford parts and accessories in the United States, or elsewhere.

Second: Using any sign, label, or using in any other manner whatsoever, the word "Ford" or "Fords" in dress and style imitative of plaintiff's trademark,

or using in any manner whatsoever any other trademark of plaintiff.

Third: Employing any sign, banner or other device containing the word "Ford," "Fords," or other combinations of the word "Ford" alone or with other words, or expressions implying that defendants are authorized agents of the plaintiff.

Fourth: Representing that defendants have any relations or dealings with plaintiff's factory at Detroit, Michigan, or with plaintiff's factory branch at Portland, Oregon, or any of plaintiff's other factory branches elsewhere.

Fifth: Acquiring a secret and undisclosed interest in any agency for the sale of Ford cars, and from inducing or attempting to induce any authorized agent of the plaintiff to make sales of Ford cars in violation of any of the terms of the contract of such agent with plaintiff.

Sixth: From advertising to the public or offering for sale to the public any new and unused Ford automobiles obtained from the duly authorized agents of the plaintiff herein in violation of said agents' contracts.

Seventh: For such other and further relief as to the Court may seem proper.

And for the costs and disbursements incurred in this suit.

E. L. McDOUGAL,
Attorney for Plaintiff.

EXHIBIT "A."



EXHIBIT "B."

Ford

EXHIBIT "C."

1915-SUB-LIMITED AGENCY CONTRACT-
1916.

THIS AGREEMENT, made at Highland Park, Michigan, this 2d day of August, 1915, by and between the Ford Motor Company, a Michigan corporation of Highland Park, Michigan, hereinafter known as the first party and Vick Bros. of Salem in the State of Oregon, hereinafter known as the second party, and S. E. Brune & Son of Woodburn, in the State of Oregon, hereinafter known as third party, WITNESSETH:

WHEREAS the first party is the manufacturer of a line of automobiles known as Ford automobiles and also of automobile parts and accessories, and

WHEREAS the second party is the Limited Agent of first party within certain territory including that hereinafter described for the sale of Ford automobiles and parts under certain defined and limited restrictions, and

WHEREAS the third party has applied to the first party to be the agent in certain territory hereinafter described, for the sale of said Ford automobiles and parts, and first and second parties are willing to appoint third party, with certain limited authority and upon the following terms and conditions only:

APPOINTMENT AS SUB-LIMITED AGENT.

NOW, THEREFORE, this witnesseth:

(1) That second party hereby designates and the first party hereby confirms the third party as Sub-Limited Agent with certain authority as herein expressly stated only, for the purpose of negotiating sales of first party's product to users only, in the methods and upon the terms and within the territory herein specifically set forth.

POWERS.

(2) That third party shall have no authority or power or duty whatsoever, except as herein expressly conferred.

AUTOS ON CONSIGNMENT.

(3) That first party will consign its Ford automobiles to the third party through the second party to be sold to users only, and not for re-sale, upon bills of sale to be executed by the first party only, as hereinafter provided.

TERRITORY.

(4) That third party shall arrange for sales of Ford automobiles only to residents of the following specified territory shown on the attached map, and to no other, namely:

North line running directly east and west through south portion of Hubbard, South line between Township line five and six, east line County line, West line County line (map).

RESIDENCE DEFINED.

In this connection, it shall be construed that a purchaser resides at either (a) his legal domicile; (b) the place where he sojourns for not less than three consecutive months; (c) his permanent place of business or occupation; or (d) either home where more than one is maintained. The decision of the first party in all violations of this sub-division shall be final and conclusive with no recourse or appeal on the part of the other parties.

DAMAGES FOR BREACH TERRITORIAL RESTRICTIONS.

(5) The sales of Ford automobiles to residents outside of third party's own territory is a serious trespass

upon the rights and earnings of other Limited Agents and Sub-Limited Agents, and tends to destroy the organization and business of the first party, and therefore, it is agreed that the territorial restrictions and limits set forth herein are of vital consequence to the first party and its business, as well as to the business of all other Limited Agents and Sub-Limited Agents, and therefore, for any and each violation of the same by the third party, third party hereby agrees to pay to the first party the sum of Two hundred fifty dollars (\$250.00) as and for liquidated damages. Said sum or sums may be deducted from any deposit he may have with the first party, or from any sums which first party may owe, for business done, to third party. First party may also cancel this contract for any such violation.

PRICES.

(6) Third party shall arrange for sales of Ford automobiles to users at the first party's full advertised list prices only, current at date of sale, plus Fifty-three and 25/100 Dollars (\$53.25) for each automobile for freight charges and delivery expenses, plus the amount, if any, of any present or future United States tax or excise upon or in respect of each automobile or sale thereof. Wherever the words "List price" are used herein they mean the latest retail selling price established or fixed by the first party.

SALES OF AUTOS FOR CASH ONLY.

(7) Third party shall arrange all sales of Ford automobiles for cash only; but if third party should accept anything but cash payment on Ford automobiles, it must be upon his own responsibility and for his own account solely, and he must remit cash only to second party or first party.

REBATES FORBIDDEN.

(8) Third party will not render any services or supply any goods either gratis or at reduced prices, nor

do or permit any act whatsoever either directly or indirectly, or through other parties, that would directly or indirectly have the effect of reducing the said current advertised list prices of Ford automobiles, plus freight and delivery charges, and said United States tax or excise, if any, and in the event of a breach or violation hereof, third party shall pay to the first party the sum of Two hundred fifty dollars (\$250.00) for every such breach or violation as and for liquidated damages arising to the first party and its business by reason of such breach or violation, or the same sum may be deducted from any moneys in first party's hands belonging to third party or which first party may owe, for business done, to third party. First party may also cancel this contract for any such violation.

CHANGES IN PRICE.

(9) The first party may change the list prices of any of its products at any time it may choose, and third party shall conform to such changes immediately upon receiving notice thereof, and in case of increase or reduction in such list prices, first party shall not be bound to make any allowance to third party in cases of automobiles shipped before such changes take effect, and the third party's commission on automobiles as yet unsold by him shall be the difference between the eighty-five per cent (85%) advanced by him on such automobiles and the new selling price, provided; that in case of a reduction in price there will be allowed to third party a proportionate rebate on his advances made on such automobiles as still remain unsold in his possession at the date of such reduction as to automobiles shipped to the third party within thirty days immediately before such date, but none as to those shipped prior to such thirty day period.

ADVANCES.

(10) Third party shall advance in cash to second party or first party as the case may be, eighty-five per cent (85%) of the full advertised list price at the time of the consignment of its automobiles to third party.

FREIGHT.

(11) Third party shall pay all freight paid out and to be paid out on the particular automobiles from Detroit or branch factory and advance freight if any, as the case may be, to third party's place of business.

TITLE OF AUTOS.

(12) First party shall retain all and complete title to each automobile until actual bill of sale, signed and executed by first party, has been delivered to the vendee, who shall be only a user; that is, one who has purchased for immediate use and not for re-sale the Ford automobile, at full advertised list price, plus freight and delivery charges, and said United States tax or excise, if any, and without rebate, donation or drawback of any character whatsoever. And any attempt to sell or dispose of or deliver any Ford automobile at less than such price shall be utterly void and shall pass no title whatsoever.

LIEN FOR ADVANCES. INSURANCE.

(13) Third party shall have a lien on each Ford automobile for the eighty-five per cent (85%) advanced by him on the same and for freight paid by him on the same, and he shall keep and maintain insurance so as to protect himself against loss.

RETAIL BUYERS' ORDERS.

(14) Third party shall take from each proposed purchaser of a Ford automobile and immediately forward to second party for the first party, a written order duly signed by him, upon the regular blank "Retail Buyer's Order," furnished by first party, without alterations or changes except the filling in of blanks, and third party will make no arrangement for the sale of a Ford automobile without taking such written signed order.

DEPOSITS ON AUTOS.

(15) All deposits of money, checks, etc., on Ford automobiles made by proposed buyers shall be remitted immediately when received with the Retail Buyer's Order to the second party for the account of the first party, who shall be the custodian thereof, and first party will make proper disposition thereof when the transaction is closed according to the rights of all parties.

COMPANY MAY REJECT ORDERS.

(16) The dealings of the third party with a proposed purchaser of an automobile or the taking of a signed order blank as herein required or a deposit or both, shall not constitute a sale, nor shall first party be bound to accept such order, but first party may wholly reject the same for any reason satisfactory to first party, and the proposed purchaser shall acquire no rights whatever in the automobile until delivery of the duly executed bill of sale as herein provided.

WEEKLY REPORTS OF BUSINESS.

(17) The third party shall report each week to second party for transmission to first party all Ford automobiles contracted for by him with purchasers under this agreement, giving motor number and description of each automobile sold or contracted for, the date of sale and full name and address of each purchaser.

WARRANTY.

(18) Third party shall have no authority to make any warranty whatsoever of Ford automobiles, but the purchaser shall be referred to the provisions of the Retail Buyer's Order and Bill of Sale in that behalf. Third party shall have no authority to make any warranty representing first party, of any parts or accessories. The current printed literature issued by the first party, will contain the only warranties of parts or accessories made by first party.

REPRESENTATIONS.

(19) The third party shall make no representations as to Ford automobiles or parts or accessories, except the same as are set forth in the printed literature issued by the first party. If third party violates these provisions he may be personally liable, but shall not in any wise bind the first party.

CLAIMS AGAINST CARRIERS.

(20) In case of damage to automobiles by carriers in transit to third party, collection from the carrier shall be made in the name of the first party as the owner of such automobiles—but as between the parties hereto, the third party shall be entitled to eighty-five per cent (85%) of the amounts realized, less the like proportion of expenses of collection, or the first party may, at its option, assign to third party all its claims in such matter, whereupon third party shall present and prosecute his own claim without any liability of the first party, and it is stipulated that first party shall not be liable to the third party for any injury or damage to the automobile after it is once delivered to the carrier or for any return of the advances thereon.

KEEP PLACE OF BUSINESS.

(21) That third party will maintain on his own account and at his own expense, a place of business and properly equipped repair shop prominently located in Woodburn for the purpose of conducting such Sub-Limited Agency business, and shall employ competent and efficient salesmen, and first party shall not in any wise be responsible for the charges connected with such place of business, nor shall third party have any authority to render first party responsible for the rent, taxes, wages, or other charges or liabilities of any nature whatsoever arising out of such business or in connection with such place of business.

THEFT OF DAMAGE TO AUTOS. FIRST PARTY NOT LIABLE FOR DAMAGES.

(22) Third party shall safely keep and he hereby agrees to save first party harmless against theft or damage of any kind to said Ford automobiles while in his possession under consignment, and in consideration of his being granted this agency, he expressly agrees that he will bear all damage or injury arising from theft, accident, injury or other cause to said automobiles so consigned to him while in his possession, or while in transit from first party or second party to third party. Inasmuch as first party bases its output and expenditures upon the orders given by its Limited and Sub-Limited Agents, therefore, and in consideration of this contract the third party hereby agrees to arrange sales under the terms of this contract and by and in accordance with the methods herein provided, of all the automobiles consigned and delivered to him pursuant to his orders for the same, and first party shall not be liable to return to third party his advances on same. The third party also agrees to save first party harmless against any and all claims made against first party by any person or persons not parties hereto for damages arising out of the conduct of third party's said business or Sub-Limited Agency whether from accident or injury or collision or loading or unloading or driving or theft or fire or from any cause of any and every nature whatsoever.

TAXES.

(23) The third party shall, as a part of the expenses of his business, pay any taxes that may be levied upon or against or on account of such business or his stock, or of any of such automobiles as may be in his possession, or in transit on bill of lading, or otherwise, for delivery to him.

SIGNS. ADVERTISEMENTS.

(24) The third party agrees to conspicuously display signs on and in his building and windows, design-

nating that he is the "Sub-Limited Agent for Ford cars" for the territory specified herein and he shall advertise the first party's product effectively in the local papers and give his immediate and careful attention to all inquiries, and give good representation to all interests of first party in the territory aforesaid. Third party agrees not to advertise or trade in the first party's product in such a way as to be an annoyance or injurious to first party or any of its duly appointed Limited Agents or Sub-Limited Agents, and that he will not repeat any such advertisements or publish any form of advertising containing matter to which the first party has objected, and that he will follow as closely as possible the advertising copy provided from time to time by the first party. When agency of third party is cancelled or terminated he agrees to remove all such signs and cease such advertising.

REPAIRS, NUMBER PLATES, ETC.

(25) Third party agrees that he will make repairs on all Ford automobiles in his territory, or coming into his territory, whether sold through him or not, and to perform this work promptly and in workmanlike manner, and that he will not remove or alter the first party's patent plate, motor number, or other numbers or marks affixed to any Ford automobile, or suffer the same to be done, and that he will not materially change any automobile consigned to him by the first party.

DEMONSTRATOR.

(26) Third party agrees to purchase from first party or through second party for himself and keep in use at all times at least one Ford automobile of the current year's model, for the sole purpose of demonstration and exhibition to intending purchasers and to maintain same in proper running condition and good, clean order and repair at all times. If he sells said automobile before the same has been in actual use three months, third party agrees that he will sell same at the full advertised list price only, and within his own ter-

ritory only, as provided in sub-divisions four, six and eight hereof. For any breach of this provision the third party shall pay to first party Two hundred fifty dollars (\$250.00) as reasonable liquidated damages. The only warranty of such demonstrating or service cars by the first party is agreed to be the same as that given by first party on automobiles sold to the general public and which is printed in the Retail Buyer's Order.

PATENTS.

(27) First party owns, and the Ford automobiles are manufactured under, and embody the following letters patent of the United States, or some of them, namely:

United States letters patent No. 747,909 issued December 22, 1903.

United States letters patent No. 773,934 issued November 1, 1904.

United States letters patent No. 787,908 issued April 25, 1905.

United States letters patent No. 847,405 issued March 19, 1907.

United States letters patent No. 879,757 issued February 18, 1908.

United States letters patent No. 1,005,186 issued October 10, 1911.

United States letters patent No. 1,012,620 issued December 26, 1911.

United States letters patent No. 1,044,038 issued November 12, 1912.

United States letters patent No. 1,066,729 issued July 8, 1913.

United States letters patent No. 1,073,569 issued September 16, 1913.

United States letters patent No. 1,075,557 issued October 14, 1913.

United States letters patent No. 1,078,042 issued November 11, 1913.

United States letters patent No. 1,098,361 issued May 26, 1914.

and of applications for letters patent now pending and undetermined. First party further owns, and Ford automobiles, parts and accessories are manufactured and sold under and embody the exclusive right to the use of the name "FORD" acquired by and through United States copyright and trademark registration numbers 74,530, issued July 20th, 1909 (script word "FORD"), and 98,655, issued July 28th, 1914 (winged pyramid design), together with the rights acquired and established thereto by and through fair trade and trade user. The validity of each of said patents and of the said copyright, registration and trade user rights, and of the claims of the first party under said applications is hereby expressly admitted; and it is agreed that the sale and use of said automobiles as delivered to the third party are restricted according to the terms of this agreement of agency, and that no license to handle or use said automobiles under such patents and applications, except strictly in accordance with the terms and conditions of this contract, is given; that third party's right to handle and deliver said automobiles embodying said patents and inventions, is restricted and limited by this contract in its terms, and that no person shall acquire the right to use said automobiles or to own the same if there be any violation of the territorial or price restrictions set forth herein; and any such violation shall constitute an infringement of each and every of said patents, applications and inventions.

COMMISSIONS.

(28) As third party's commission for making such sales of Ford Automobiles, first party will, after payment by the purchaser, allow to third party (except in the cases specified in sub-division nine hereof) fifteen per cent (15%) of such full advertised list price, and will

allow to third party such freight and delivery charges, and United States tax or excise, if any, as aforesaid.

ADDED COMMISSIONS.

(29) First party agrees to allow and pay to third party the following additional commissions on the net amount of business he shall do hereunder during the term of this agreement upon Ford automobiles, but not on Ford parts, repairs or accessories, namely: No added commissions whatever when his said business shall total less than \$5,000.00, but when the third party shall have done such business (not including freight charges and not including his fifteen per cent (15%) commission) to the amount of \$5,000.00, his right to additional commissions shall begin, and he shall be entitled to such added commissions as follows: On all such business totaling less than \$10,000.00, one per cent (1%); if \$10,000.00 and less than \$20,000.00, two per cent (2%) on all such business; if \$20,000.00 and less than \$35,000.00, three per cent (3%) on all such business; if \$35,000.00 and less than \$50,000.00, four per cent (4%) on all such business; if \$50,000.00 or more, five per cent (5%) on all such business. That is, for illustration, if he shall have done \$7,000.00 total business as above described, his commission shall be one per cent (1%) on all of such \$7,000.00. If, for illustration, his total business as above described shall be \$34,900.00, his commission shall be three per cent (3%) on all of such \$34,900.00. If \$49,900.00, then four per cent (4%) upon all of such \$49,900.00; if it shall total \$50,000.00, then five per cent (5%) on all of such \$50,000.00, and likewise five per cent (5%) upon all such business over \$50,000.00.

If any payments shall have been made to third party during the year on the one per cent (1%) basis or any lower basis than he shall finally be entitled to such payments shall be credited on the final amount owing him and shall be deducted when he becomes entitled to and shall receive the higher percentages.

COMPANY MAY SELL DIRECT.

(30) First party and second party hereby expressly reserve to each the right to make direct sales to customers in the territory above described, and in such case will pay one (and only one) commission of five per cent (5%) of the list price of the automobile or automobiles so sold, after first or second party shall have received the full purchase price in cash, to the third party. This provision shall not apply to sales of parts or accessories, which are otherwise provided for herein, nor to sales made to purchasers domiciled or residing outside said territory within the meaning of Sec. four of this agreement, even though delivery should be made within said territory to residents of such other territory.

STOCK OF FORD PARTS.

(31) Third party agrees that he will purchase from the first party on his own account and carry on hand at third party's place of business aforesaid, a stock of Ford parts that will inventory at all times during the term of this agency contract, not less than Two Hundred Dollars (\$200.00) at the list price, and first party shall have the right to send its representative to inventory such stock of Ford parts as third party may have on hand, at any time during the term of this contract. First party may cancel this contract for any breach of this provision. Inasmuch as the reputation of Ford automobiles is often injured by the use therein of inferior parts not made or furnished by the Ford Motor Company, therefore, the third party also hereby agrees that all his purchases of parts of Ford automobiles shall be made, as to all parts listed in its parts catalogue, exclusively from the first party, and that he will not use, sell or recommend to Ford owners similar parts manufactured by others.

DISCOUNT ON PARTS.

(32) First party agrees to allow the third party a discount of Twenty-five per cent (25%) on all parts of

Ford automobiles listed in the Ford parts price lists, excepting on bodies, on which the discount shall be fifteen per cent (15%) only. These discounts are allowed in consideration of third party's agreement to carry stock as provided in sub-division thirty-one above, and in consideration of the other provisions of this contract.

RETURN OF PARTS.

(33) The third party shall have the right and privilege of returning to first party at the place of purchase at any time during the term of this contract, or within thirty days after its cancellation or expiration, but at his own expense, for credit at the purchase price, all such new parts of first party's automobiles as he may desire, except bodies, tops, tires, lamps, generators, speedometers, windshields, and other equipment known in the trade as "accessories" provided same are in as good condition as when sold by the first party or second party to the third party.

COMPANY MAY SELL PARTS.

(34) First party and second party reserve the right and privilege to sell and deliver or cause to be sold and delivered any parts of Ford automobiles, repairs, accessories or other goods that may be ordered from them by any person or persons within the territory covered by this agreement, without the payment of any profit or allowance or any discount or credit whatever to the third party upon such sales. It is expected and intended that third party will carry the stock of Ford parts, repairs and accessories as herein provided, and that nearly all orders for such parts, repairs and accessories will be placed with him by all persons in the above described territory.

CLAIMS.

(35) It is further agreed that no claims regarding errors in shipments or billings are to be recognized by first party, unless received in writing either by the

first party or the second party from the third party within ten days after receipt of the goods by the third party.

CRATING, ETC., EXTRA.

(36) The first party will be entitled to receive an extra charge for crating, packing, double decking and loading, which the third party shall stand and pay as a part of the expenses of conducting his business.

DELAYS IN SHIPMENTS.

(37) The first party shall not be liable in any way for delayed shipments of any goods ordered, or on account of shipments by any other than a specified route.

PAYMENTS AT HOME OR BRANCH OFFICE

(38) The third party agrees to take up all sight drafts with exchange drawn on him by the first party for automobile consignments or for shipments of parts, when shipments arrive or when sight drafts are presented, the intent hereof being that payments are to be made to the first party at its home or branch office, but if it elects to draw drafts, the same will be honored with exchange by third party.

DEPOSITS.

(39) As a guarantee of the full and faithful performance by the third party of all the terms and conditions of this agreement, the third party has deposited with the first party the sum of Two Hundred Dollars (\$200.00) in cash, and it is agreed that the first party may, at its option, apply any part or all of said amount towards the liquidation of any past due accounts owing by third party to first party, or any other legitimate claims arising from the third party's failing to perform the obligations of this agreement, and the balance of said contract deposit, if any, shall be returned to the third party at the termination of this agreement and the fulfillment of all its requirements. In case of cancellation or termination of this contract as herein provided,

such deposit balance on hand may be retained by first party as security for and until the fulfillment of all provisions hereof as to the winding up of the business of the agency and final disposition of all unsold cars as stipulated herein. Third party shall not be at liberty to treat said deposit as an offset against any accounts owing by him to first party.

ESTIMATE OF AUTOS REQUIRED.

(40) In order that first party may determine the prospective requirements of its business for the business year ending July 31, 1916, and may base its contracts for materials, etc., thereon, the third party agrees that he will require consignments of not less than 22 Ford automobiles for his said territory between the date hereof and July 31, 1916, to be shipped in the various months as per the following schedule, and he hereby makes requisition for such automobiles to be shipped as stated, namely:

| | |
|-----------------------------|----------------------------|
| In August, 1915, 8 autos | In February, 1916, 0 autos |
| In September, 1915, 0 autos | In March, 1916, 0 autos |
| In October, 1915, 0 autos | In April, 1916, 8 autos |
| In November, 1915, 0 autos | In May, 1916, 3 autos |
| In December, 1915, 0 autos | In June, 1916, 0 autos |
| In January, 1916, 3 autos | In July, 1916, 0 autos |

REQUISITIONS MAY BE DECLINED.

(41) First party agrees that the foregoing requisitions of the third party will receive first party's careful and good faith attention, but first party does not agree absolutely to fill them, but expressly reserves the right to refuse them from time to time, or such parts of them as the first party deems necessary or proper, and all such requisitions are subject to delays occurring from any cause whatsoever in the manufacture and delivery of its product—no legal liability to fill such requisitions being incurred under any circumstances. And the third party may cancel, upon one month's full written notice to first party, the said requisitions, or what remains unfilled thereof.

PRICE MAY BE CHANGED.

(42) It is further agreed that the foregoing requisitions for consignments of Ford automobiles are given by third party and received by first party subject to the express condition that prices are subject to be changed by the first party at any time during the year and deposits are so accepted; in the event of changes, however, the third party may cancel such remaining requisitions, and may demand and receive back from the first party such deposits as may have previously been made, less any amounts for which third party may be obligated or owing either directly or indirectly to the first party.

NO ASSIGNMENT.

(43) The third party shall have no right to assign this contract, or any interest in the same, without the written consent of the first party.

METHODS OF TRANSACTING BUSINESS.**SAME MAY BE CHANGED.**

(44) The intention of the parties is that third party shall transact his business with first party through the second party—receive the consignments of automobiles through second party, make advances to second party, make remittances and deposits through second party, make his reports and send his Retail Buyers' Orders, receive his payments or commissions and the like through the second party, and generally transact his business under this contract through the second party; but all final authority and direction shall rest with the first party, who may order or direct any change in methods of business either in particular instances or in general, as it may deem best, and the second and third parties shall conform thereto.

DITTO.

(45) If the contract of the Limited Agency which exists between first party and second party, and which covers the territory of third party herein described, together with other territory, shall be terminated for any reason or by either party, then the first party shall take over this contract with third party and transact the business directly, or substitute another Limited Agent as the second party hereto at first party's option.

CANCELLATION.

(46) This contract shall continue in force and govern all transactions between the parties until July 31, 1916, but it is agreed that either the first or third party shall be at liberty, with or without cause, to cancel and annul this contract at any time upon written notice by registered mail to the other party and such cancellation shall also operate as a cancellation of all orders for automobiles, automobile parts or attachments which may have been received by the first party from the third party prior to the date when such cancellation takes effect.

SALE OF AUTOS ON HAND AT TIME OF
TERMINATION.

(47) In case of the cancellation or expiration of this contract the first party may at its option retake possession of all such of the aforesaid automobiles as third party may have on hand on consignment, unsold at the date of such cancellation or expiration at the same time returning to him his advancements on the said automobiles; or at the option of the first party it shall be the duty of the third party and he undertakes (for the purpose of winding up the affairs of his said Sub-Limited Agency) to take orders for the sale of such automobiles as he may have on hand unsold at the time of such cancellation or expiration the same to be made strictly under and in accordance with the terms of this contract provided, however, if, after reasonable effort

on the part of third party to make such sale there shall remain on hand any such automobiles unsold after three months from date of such cancellation or expiration, then on request by third party and payment by him to first party of ten per cent (10%) additional of the list price first party will sell said automobiles to said third party and give him bill of sale thereof for his own use or for such other disposition as he may choose to make.

TERMINATION.

(48) Upon termination of this contract, whether by expiration or cancellation, all liability on the part of the first party or second party shall, except as to matters pending at the date of such termination, cease and determine, and the third party shall have no claim to commission, rebate or damage, notwithstanding transactions may thereafter take place with or sales be made to parties with whom the third party shall have dealt during the currency of this contract.

NO WAIVER OF THESE PROVISIONS.

(49) The failure of the first party to enforce at any time any of the provisions of this contract, or to exercise any option which is herein provided, or to require at any time performance by the third party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this contract or any part thereof, or the right of the first party to thereafter enforce each and every such provision.

MICHIGAN CONTRACT.

(50) This contract, it is agreed, is a Michigan contract and shall be construed as such.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the day and year first above written.

Signature of the First Party

FORD MOTOR COMPANY.

By W. A. RYAN (L. S.)
Manager of Sales.

Approved, F. B. NORMAN,
Branch Manager.

O. K'd, W. S. McNAMARA,
Accounting.

Ckd. and App., E. W., Sales.

Signature of the Second Party,

VICK BROS. (L. S.)

By GEO. F. VICK (L. S.).

Witness: CHAS. E. GODON.
Signature of the Third Party,

S. E. BRUNE & SON (L. S.).

By S. E. BRUNE (L. S.).

Witness: CHAS. E. GODON.

BANK OF WOODBURN.
(Name of Sub-Limited Agent's Bank.)

Form 926.

C. R. Oct. 22, 1913, page 22, \$200.00 (Received
Portland Branch Dec. 17, 1915).

Ford Motor Co.

(Indorsed)

Portland, Ore., Branch

1915-1916

SUB-LIMITED AGENCY CONTRACT.

File No. 5172.

FORD MOTOR COMPANY

Highland Park, Michigan,

WITH

S. E. Brune & Son

Street

City, Woodburn.

State, Oregon.

Territory, Woodburn, Ore., and vicinity.

Dated August 2, 1915.

Expires July 31st, 1916

Under Limited Agent:

Vick Bros., Salem, Ore.

EXHIBIT "D."

Our Festival Week Special

New Ford Touring Cars

\$467.50 CASH

We Are NOT Agents of the Ford Motor

Co. Our Territory Is Unlimited.

Buy That New Ford Car Now and Drive It Home

BENJ. E. BOONE & CO.

514 Alder Street

Main 3966

State of Oregon,
County of Multnomah,—ss.

I, F. B. Norman, being first duly sworn, depose and say that I am the manager of plaintiff corporation, in the above entitled suit, and that the foregoing amended and supplemental complaint is true as I verily believe.

F. B. NORMAN.

Subscribed and sworn to before me this 14th day of June, 1916.

(Seal)

E. L. McDOUGAL,

Notary Public for the State of Oregon.

My commission expires Sept. 23, 1919.

Filed June 14, 1916.

G. H. MARSH, Clerk.

And afterwards, to wit, on the 8th day of July, 1916, there was duly filed in said court, and cause, a Stipulation that Motion to dismiss Bill of Complaint and to strike out, filed to original Bill of Complaint be deemed to be filed to Amended and Supplemental Bill of Complaint, in words and figures as follows, to wit:

STIPULATION AS TO MOTION TO DISMISS
AND TO STRIKE OUT.

It is hereby stipulated by and between the plaintiff, Ford Motor Company, by its attorneys, McDougal & McDougal, and the defendant, Benj. E. Boone & Company, et al., by their attorneys Messrs. Littlefield & Maguire, that the motions to dismiss and strike and make more definite and certain heretofore filed against the original complaint in said suit shall be construed to be re-filed as to the amended and supplemental complaint.

Dated this 3d day of July, 1916.

E. L. McDOUGAL,
Of Attorneys for Plaintiff.

LITTLEFIELD & MAGUIRE,
Attorneys for Defendants.

Filed July 5, 1916.

G. H. MARSH, Clerk.

And afterwards, to wit, on the 5th day of July, 1916, there was duly re-filed in said Court and cause, pursuant to stipulation, Motion to dismiss Amended and Supplemental Bill of Complaint and to Strike out, in words and figures as follows, to wit:

**MOTION TO DISMISS AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT.
MOTION TO STRIKE OUT.**

Come now the defendants in the above entitled suit and move the court to dismiss the complaint heretofore filed against them, upon the grounds, and for the following reasons:

I.

That said complaint does not show any facts wherein and whereby it appears that the amount in controversy between plaintiff and defendant exceeds the sum of \$3000.00 exclusive of interest and costs.

II.

That said complaint does not state facts sufficient to constitute a cause of suit against the defendants, or any one of them.

III.

That said complaint does not state facts sufficient to entitle the plaintiff to the relief prayed for.

IV.

That said complaint does not show that the defendant, or any one of them, is selling or offering for sale, under the name of Ford, Fords, Ford Cars, Ford Motor Cars, or Ford Automobiles, or any products other than those which have before been manufactured by the plaintiff corporation.

V.

For the reason that in said complaint, the plaintiff endeavors to join more than one cause of suit.

VI.

To dismiss each and every portion of said complaint commencing with the word "and," in line 1, page 4, and ending with the word "used" in line 26, page 4, for the reason that the same is frivolous, impertinent, irrelevant and immaterial.

VII.

And dismiss all of that portion of Paragraph 15, designated as sub-division A, and all that portion of said Paragraph designated sub-division B, and all that said Paragraph, designated as sub-division C, and all that said portion of said Paragraph designated as sub-division D, for the reason that the same is frivolous, impertinent and scandalous, and has no bearing upon the cause of suit which the plaintiff could and would have against the defendants.

Attorneys for Defendants.

Filed June 12, 1916, and re-filed, pursuant to Stipulation, July 5, 1916.

G. H. MARSH, Clerk.

And afterwards, to wit, on Monday the 17th day of July, 1916, the same being the 12th judicial day of the regular July term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER SUSTAINING MOTION TO DISMISS.

This cause was heard upon the motion of the defendant to dismiss the amended and supplemental bill of complaint herein, said plaintiff appearing by Mr. E. L. McDougal, of counsel, and said defendant appearing by Mr. Robert F. Maguire, of counsel; on consideration whereof, it is ordered and adjudged that said motion be and the same is hereby allowed.

And afterwards, to wit, on Monday, the 31st day of July, 1916, the same being the 24th judicial day of the regular July, 1916, term of said Court; present: the Honorable Charles E. Wolverton, United States District Judge presiding, the following proceedings were had in said cause, to wit:

FINAL DECREE.

Now at this day come the defendants by Mr. E. V. Littlefield, of counsel, and move the court for a decree dismissing the Amended and Supplemental bill of complaint herein; and it appearing to the court that a motion filed by said defendants to dismiss the Amended and Supplemental bill of complaint was heretofore sustained by the court and that said plaintiff has failed to amend said bill of complaint or otherwise plead,

within the time fixed by the rules of this court, it is therefore,

Ordered, adjudged and decreed that the Amended and Supplemental bill of complaint herein be and the same is hereby dismissed and that said defendants do have and recover of and from said plaintiff their costs and disbursements herein taxed at \$36.10, and that they have execution therefor.

And afterwards, to wit, on the 18th day of September, 1916, there was duly filed in said Court and cause, an Opinion of the Court, in words and figures as follows, to wit:

OPINION.

Portland, Oregon, July 3, 1916.

R. S. Bean, District Judge (Oral) :

The case of Ford Motor Company vs. Boone was submitted on a motion for a preliminary injunction. The purpose of the suit, substantially is to restrain the defendant companies from obtaining Ford automobiles from so-called agents of the plaintiff company and selling them at a price less than the list price. Attached to the bill is a copy of the contract made between the Motor Company and its agents or sub-agents. The right to relief depends upon the construction of this contract. If it is a mere consignment contract and the title to these cars remains in the Ford Company then the defendants should be restrained from in-

ducing or persuading these agents to violate their contract.

Now, this contract is adroitly drawn, no question about that, and it attempts to control, not only the price at which agents or sub-agents of the company shall sell automobiles, but the persons to whom they shall sell them, and the territory in which they shall be sold. It purports to appoint certain persons agents or limited agents of the plaintiff company for the sale of automobiles within designated territories. It provides that the agents shall pay to the company 85% of the list price at the time the cars are consigned, in other words, shall pay the 85%, which is all the Ford Company gets or expects to get from the sale of their cars, at the time the cars are consigned and before they pass into the possession of the agent. In addition to that, the agent is required to pay the freight, and he is required to sell the cars at a price not less than the list price fixed by the company. It is further provided that all applications to purchase cars shall be forwarded by the agent, or so-called agent, to the company, and shall be approved by it before the sale is made. It is further provided that the agent shall pay the insurance on the cars and all expenses of maintaining the business, and that he shall not sell them at a less price than that fixed by the company. There are many other provisions in the contract but these are all that are necessary for present purposes. Now, as I said, the contract attempts to control the price at which the agent shall sell cars, not only the price at which he shall sell them but the territory in which they shall be sold and

the persons to whom sale shall be made, notwithstanding the fact that it requires the agent to pay for the cars in advance before they receive possession of them. In other words, when the agent complies with this contract and pays for the cars, the title vests in the agent, and they are his property from that time on. So the question presented under this contract, as I understand it, is whether a manufacturer can control the price at which his product shall be sold in the market. Upon that question there has been considerable discussion among economists, and some courts have held that a manufacturer has that right, but the question came before the Supreme Court of the United States in the case of *Dr. Miles Medical Company vs. Parke & Sons Company*, and it was there held that a manufacturer could not control the price at which his products were sold after he had once parted with the title thereto. In this medical case, the complainant was the manufacturer of certain medicines by a secret process, and it proposed to establish a minimum price at which sales should be made by its vendees, and by subsequent purchasers who trafficked in the remedy. To accomplish this result, it adopted two forms of contract, one with the wholesaler and another with the retailer, and stipulated in these contracts the price at which its product should be sold, and that the wholesaler should not sell to any one except to designated retailers and those approved by the manufacturing company. It was charged in the bill against *Parke & Sons*, who had acquired some of these goods and were threatening to sell them at cut-rate prices, or prices below those fixed by the man-

ufacturer, that they obtained possession of these goods from the wholesale and retail dealers by unlawful and fraudulent means, and that after they obtained possession of the goods, they advertised them for sale at less than manufacturer's price. It was also alleged that for the purpose of concealing the source of supply, they removed the identifying serial numbers so that it was impossible for the manufacturer to trace these goods and ascertain from whom the defendants received them.

This case went to the Supreme Court of the United States, and after a thorough consideration of the matter, the court held that the injunction should not issue. The medical company, under the law, had no right to control the price at which these goods should be sold in the market after it had once parted with the title.

The same doctrine was subsequently announced by the Supreme Court in *Bauer vs. O'Donnell* (229 U. S. 1) in the case of a patented article. So, whether we regard these cars as a patented article, or the plaintiff as a mere manufacturer, I can conceive no difference in substance between this case and the *Miles* case and therefore the injunction is denied.

There are some statements in the bill that the defendants are engaged in an unfair competition with the plaintiff, but the bill shows that it is engaged in selling the identical article manufactured by the plaintiff and it does not pretend or represent to sell any other or different article, and therefore it is not engaged in unfair competition, within the meaning of the rule that justifies a court of equity interfering, so I take it, un-

der this showing, preliminary injunction ought not to issue.

Filed September 18, 1916.

G. H. MARSH, Clerk.

And afterwards, to wit, on the 18th day of September, 1916, there was duly filed in said Court and cause, a Petition for Appeal, in words and figures as follows, to wit:

PETITION FOR APPEAL.

To the Honorable R. S. Bean, District Judge:

The above named complainant, Ford Motor Company, a corporation, brings this, its petition, for an appeal to the Circuit Court of Appeals for the Ninth Circuit, and respectfully shows that on the 31st day of July, 1916, there was rendered and entered in the above entitled court, a decree dismissing complainant's bill in the above entitled suit and assessing defendants' costs at \$36.10, and in the proceedings had prior thereto in this suit and in the dismissal of said bill certain errors were committed to the prejudice of the plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition, wherein the above named plaintiff prays that this appeal may be allowed from the above entitled court to the United States Circuit Court of Appeals for the Ninth District for the correction of the errors so complained of and that a transcript of the record, proceedings and papers in this suit duly authenticated, may be sent to

said Circuit Court of Appeals and that all other proceedings in the above entitled District Court be suspended, stayed and superseded and that judgment and execution herein be stayed until the final disposition of said appeal in said United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 18th day of September, 1916.

E. L. McDOUGAL,
Attorney for Plaintiff.

ALFRED LUCKING,

L. B. ROBERTSON,
Of Counsel.

Filed September 18, 1916.

G. H. MARSH, Clerk.

And afterwards, to wit, on the 18th day of September, 1916, there was duly filed in said Court and cause, an Assignment of Errors, in words and figures as follows, to wit:

ASSIGNMENT OF ERRORS.

Now on this 18th day of September, 1916, comes the above named plaintiff and complainant, Ford Motor Company, a corporation, and says, that in the records and proceedings of said court in the above entitled action, and in the final decree made and entered herein on the 31st day of July, 1916, there is manifest error and for error the said complainant assigns the following:

I.

That the court erred in that it did not hold that by the admission of the motion to dismiss the bill the words "Ford," "Fords," "Ford Motor Cars," "Ford Cars," "Ford Automobiles," or "Ford Distributors," referred to in the bill of complaint, were trade names and rights designating authorized agencies of the complainant, whereby complainant's business and property were known and identified, and entitled to be protected as such and that the use by the defendants of the words "Ford," "Fords," "Ford Motor Cars," "Ford Cars," "Ford Automobiles," or "Ford Distributors," by them availed of, was calculated to mislead the public, inequitable, and should have been enjoined as a violation and infringement of complainant's rights.

II.

That the court erred in that it did not hold that by the admission of the motion to dismiss the bill, that representations of Ford agency, the use of the script word "Ford," and the Ford "winged pyramid" trademark, in connection with said agency representations all referred to in the bill of complaint, were trade names, symbols and rights, whereby the complainant's business and property were known and identified, and that the use by the defendants of the trade names, symbols and rights by defendants availed of, was calculated to mislead the public, inequitable and should have been enjoined as a violation and infringement of complainant's rights.

III.

That the court erred in that it did not hold that by the admission of the motion to dismiss the bill, representations of agency and the ability to obtain unlimited stock of new Ford automobiles from the complainant's factory, referred to in the bill of complaint, were complainant's trade rights and property and that the representations by the defendants, referred to in the bill of complaint, as having been made by them, the defendants, was calculated to mislead the public, inequitable and should have been enjoined as a violation and infringement of complainant's rights.

IV.

That the court erred in that it did not hold that by the admission of the motion to dismiss the bill of complaint, the complainant was entitled to protection in its right to contract with its agents to arrange for the sale of Ford automobiles, all in the bill of complaint referred to, and that defendants' interference was calculated to mislead the public, inequitable and should have been enjoined as a violation and infringement of complainant's rights.

V.

That the court erred in that it did not hold by the admission of the motion to dismiss the bill, that the words "Ford Auto Agents" was a trade name and symbol, the exclusive right to use it belonging to complainant and referred to in the bill of complaint as having been by it used, and that the use by the defend-

ants of said words referred to in the bill of complaint, as having been by them used, was calculated to mislead the public, inequitable and should have been enjoined as a violation and infringement of complainant's rights.

VI.

That the court erred in that it did not hold that by the admission of the motion to dismiss the bill, the complainant was equitably entitled to be protected in the sale of new Ford automobiles at the price fixed by the complainant, in accordance with the contracts, all in the bill of complaint referred to, and that the defendants by obtaining, advertising the sale of, and selling cars at less than the price fixed by complainant, all in the bill of complaint referred to, was calculated to mislead the public, inequitable and should have been enjoined as a violation and infringement of complainant's rights.

VII.

That the court erred in that it did not hold by the admission of the motion to dismiss the bill, that the complainant was equitably entitled to be protected in its contracts with its agents in that said contracts were consignment contracts and not sale contracts, as referred to in the bill of complaint, and that defendants' interference with said contracts, all in the bill of complaint referred to, was calculated to mislead the public, inequitable and should have been enjoined as a violation and infringement of complainant's right to contract.

VIII.

The court erred in that it did not hold that by the admission of the motion to dismiss the bill of complaint the complaint did not state a good cause of suit to which the defendants should be required to file their pleas and answers.

IX.

That the court erred in sustaining the motion to dismiss and directing that the bill of complaint be dismissed.

X.

That the court erred in not granting to complainant the relief prayed in the bill of complaint.

XI.

That the court erred in holding that the contract set up in the bill of complaint was not a consignment contract but was a contract of sale to so-called agents.

XII.

The court erred in holding that the complainant did not retain title to the cars under the contract in question until the bill of sale was given to the purchaser.

XIII.

The court erred in holding that the defendants should not be restrained from inducing or persuading plaintiff's agents from violating their contracts and

disposing of the cars at less than the price fixed by plaintiff under the terms of the contract.

XIV.

The court erred in holding that when the agent advances 85% of the price of the cars under the terms of the contract and possession of the car was delivered to him that he thereby obtained title and the car became his property.

XV.

The court erred in holding that the contract in question set up in the bill of complaint was illegal and invalid in so far as it undertook to fix the prices at which the car should be sold to the public.

XVI.

The court erred in holding that this case was governed by the decisions in the so-called Miles Medicine case and the Sanatogen case so-called.

XVII.

The court erred in holding that notwithstanding a solemn contract stipulating that the title should remain in the plaintiff until actual bill of sale was delivered to the purchaser nevertheless such stipulations could be disregarded and breached by the agents.

XVIII.

The court erred in holding that such stipulations that title should remain in plaintiff until bills of sale were delivered to the customer and that the persons advanc-

ing the 85% should only be agents for purposes of arranging the sales should and could be lawfully disregarded and breached and interfered with by third persons.

XIX.

The court erred in holding that it was illegal to fix the price at which patented articles like cars in question should be sold to the public by the agents.

XX.

The court erred in holding that under the contracts in question a complete and unqualified title passed to the agents or second parties in such contracts upon payment of the 85%.

XXI.

The court erred in holding that complete and unqualified title passed to such agents and that it was lawful for the defendants to procure agents to breach their express stipulations with reference to prices.

XXII.

The court erred when it did not hold that contracts in question were provisional agreements for sale only to be according to the explicit terms of such contracts.

XXIII.

The court erred in disregarding many of the express stipulations of the contracts, in question, and overruling and disregarding the same as illegal and invalid.

XXIV.

The court erred in not holding that under the contracts in question only qualified rights were passed to the agents or second parties until full compliance with the conditions prescribed in such contracts.

XXV.

The court erred in disregarding the right of the owner of personal property to sell it only upon such terms as he may see fit to stipulate.

XXVI.

The court erred in holding that an agreement between the parties by which the owner and manufacturer retains title until he delivers a bill of sale is invalid and may be disregarded.

XXVII.

The court erred in not granting plaintiff relief against defendants' willful interference with plaintiff's contract rights with its agents.

XXVIII.

The court erred in not holding that the facts in the case showed such willful and malicious interference by the defendants with plaintiff's business and agents as to entitle the plaintiff to relief therefrom in a court of equity.

XXIX.

The court erred in this even if a qualified title were passed to the second parties under the contracts in

question, in holding that a solemn contract governing the matter of resale prices should and could be lawfully disregarded and breached by second parties and interferred with by third persons.

XXX.

The court erred in holding that it was illegal to fix the resale price of patented articles.

XXXI.

The court erred in holding that a contract governing resale prices was substantially the same as a notice attached to the article.

WHEREFORE complainant prays that said decree of dismissal be reversed and that said court may be directed to enter a decree in accordance with the prayer of complainant's bill.

E. L. McDOUGAL,
Attorney for Complainant.

ALFRED LUCKING,

S. B. ROBERTSON,
Of Counsel.

Filed September 18, 1916.

G. H. MARSH, Clerk.

And afterwards, to wit, on Monday the 18th day of September, 1916, the same being the 66th judicial day of the regular July, 1916, term of said Court; present: the Honorable Robert S. Bean, United States District Judge presiding, the following proceedings were had in said cause, to wit:

ORDER ALLOWING APPEAL.

Ford Motor Company, a corporation, plaintiff herein, having filed herein and presented to the court its petition praying for the allowance of an appeal from the above entitled court to the United States Circuit Court of Appeals for the Ninth Circuit, and having submitted therewith the assignment of errors intended to be urged by it, praying also that a transcript of the record, proceedings and papers in this cause duly authenticated be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, and praying also that meanwhile all other proceedings in the above entitled District Court be suspended, stayed and superseded and that judgment and execution herein be stayed until the final disposition of said appeal in the aforesaid United States Circuit Court of Appeals for the Ninth Circuit,

It is hereby ORDERED that the aforesaid appeal be and the same is hereby allowed, and it is further

ORDERED that a transcript of the record, proceedings and papers in this cause duly authenticated, be sent to the aforesaid United States Circuit Court of Appeals, for the Ninth Circuit, and it is further

ORDERED that all further proceedings in the above entitled District Court be suspended, stayed and superseded until the final disposition of said appeal in the aforesaid United States Circuit Court of Appeals, for the Ninth Circuit, upon filing an undertaking in the sum of One Thousand Dollars (\$1000) to be approved by the court.

It is further ORDERED that upon the filing of said bond judgment and execution be stayed until the final disposition of said appeal in the aforesaid United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 18th day of September, 1916.

R. S. BEAN,
United States District Judge.

Filed September 18, 1916.

G. H. MARSH, Clerk.

And afterwards, to wit, on the 18th day of September, 1916, there was duly filed in said Court and cause, a Bond on Appeal, in words and figures as follows, to wit:

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, the Ford Motor Company, a corporation, as principal and Royal Indemnity Company, a corporation, as surety, acknowledge ourselves to be jointly in-

debted to Benjamin E. Boone, Inc., a corporation, Benjamin E. Boone, Benjamin E. Boone, Inc., a corporation, D. R. Boone and Nora Carlyle, a co-partnership, doing business as Benjamin E. Boone & Co., defendants in the above case, in the sum of One Thousand Dollars (\$1000) conditioned that

WHEREAS on the 21st day of July, A. D. 1916, in the District Court of the United States for the District of Oregon, in the suit pending in that court, wherein the Ford Motor Company, a corporation, was plaintiff, and Benjamin E. Boone, Inc., a corporation, Benjamin E. Boone, and Benjamin E. Boone, Inc., a corporation, D. R. Boone and Nora Carlyle, a co-partnership, doing business as Benjamin E. Boone & Co., were defendants, a decree was rendered against the said Ford Motor Company, dismissing its complaint and the said Ford Motor Company obtained an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, and filed a copy thereof in the office of the Clerk of the Court, to reverse the said decree and a citation directed to said defendants, citing and admonishing them to be and appear at the session of the United States Circuit Court of Appeals, for the Ninth Circuit, to be held in the City of San Francisco, California, on the 18th day of October, 1916, next,

NOW if the said Ford Motor Company, a corporation, shall prosecute this appeal to effect and answer all damages and costs, if it fails to make its plea good,

then the above obligation to be void, else to remain in full force and effect.

FORD MOTOR COMPANY, a corporation.

By W. S. McNAMARA, Asst. Manager.

ROYAL INDEMNITY COMPANY, a corporation.

By HOWARD R. SHROYER,
Attorney-in-Fact.

This bond approved this 18th day of September, 1916.

R. S. BEAN, Judge.

Filed September 18, 1916.

G. H. MARSH, Clerk.

And afterwards, to wit, on the 19th day of September, 1916, there was duly filed in said Court and cause, a Praecipe for Transcript, in words and figures as follows, to wit:

PRAECIPE FOR TRANSCRIPT.

To G. H. Marsh, Clerk of the above entitled court:

You are requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal

allowed in the above entitled case and to include in such transcript of record the following:

(1) Complainant's amended and supplemental complaint.

(2) Stipulation that motion to dismiss original complaint shall stand as motion to dismiss amended and supplemental complaint.

(3) Motion to dismiss supplemental and amended complaint.

(4) Opinion of District Judge, Hon. R. S. Bean, on refusing temporary injunction.

(5) Decree dismissing complaint.

(6) Petition for Appeal.

(7) Assignment of Errors.

(8) Order allowing Appeal.

(9) Bond for Costs, etc.

(10) Citation on Appeal.

(11) Praecipe for Transcript.

Respectfully,

E. L. McDOUGAL,
Attorney for Complainant, Ford Motor Company.

Filed September 19, 1916.

G. H. MARSH, Clerk.

United States of America,
District of Oregon—ss.

I, G. H. Marsh, Clerk of the District Court of the United States, for the District of Oregon, do hereby certify that I have prepared the foregoing transcript of record on appeal in the case in which the Ford Motor Company, a corporation, is plaintiff and appellant, and Benjamin E. Boone, Inc., a corporation, Benjamin E. Boone, and Benjamin E. Boone, Inc., a corporation, D. R. Boone and Nora Carlyle, a co-partnership, doing business as Benjamin E. Boone & Co., are defendants and respondents, in accordance with the law and the rules of court, and in accordance with the praecipe of said appellant, filed in said cause, and that the said transcript is a full, true, and correct transcript of the said record and proceedings had in said court in said cause, in accordance with the said praecipe, as the same appear of record and on file at my office and in my custody.

And I further certify that cost of foregoing transcript of record is \$.for printing said record, and that the same has been paid by said appellant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Portland, in said District, this.day of.A. D. 1916.

Clerk.

